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contract provides for its payment on recurring and for specified periods, the court in settling the account, in the absence of a specific agreement to pay lawful interest on the installments in default, will only allow simple interest on the principal sum due.

Appeal from Circuit Court, Washington County.

Suit by F. T. Blanchard against the Dominion National Bank and others. Decree for the named defendant, and complainant appeals, and the named defendant cross-appeals. Affirmed, as amended.

A. H. Blanchard, of Bristol, *Hutton & Hutton*, of Abingdon, for plaintiff.

Peters & Lavinder, of Bristol, for defendants.

CORVIN *v.* COMMONWEALTH.

Sept. 22, 1921.

[108 S. E. 651.]

1. Divorce (§ 328*)—When Divorce Decree Will Be Given Full Faith and Credit in Other States.—Divorce decree of court in state in which the parties were married, rendered in conformity to the laws of such state, against constructively served defendant who has left the state, will be given full faith and credit in other states under the federal Constitution, but decree granted in state other than that of the matrimonial domicile, in suit by party who has acquired, or who claims to have acquired, a bona fide residence in such other state, without personal service or appearance of other party, is not binding in state of matrimonial domicile under the full faith and credit clause, and its force will depend upon the respect given it by the courts of the state of matrimonial domicile as a matter of comity.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 212.]

2. Judgment (§ 509*)—Fraud Vitiates Judicial Proceedings, though They Appear to Be Legal in Form.—Fraud vitiates judicial proceedings, even where they appear to be legal in form.

3. Divorce (§ 329*)—Decree Fraudulently Procured Held Not Entitled to Full Faith and Credit in Other State in Bigamy Prosecution.—Where husband, who had forced wife to leave him, obtained a divorce in other state on constructive service by fraud, in that he gave false testimony that wife had abandoned him, and that separation had taken place one year prior to actual date, the decree was not entitled to full faith and credit, under the federal Constitution, in state in which they had lived prior to separation, in prosecution of

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

husband for bigamy following his marriage to and cohabitation with second wife, even though husband acquired a bona fide residence in state in which decree had been rendered.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 212.]

4. Bigamy (§ 2*)—Fraudulent Divorce Decree Rendered in Other State Held No Defense.—Divorce decree obtained by husband against constructively served wife, in state other than that in which they had lived prior to separation, by the means of fraud, held no defense under Code 1919, § 4538, in prosecution of husband for bigamy in state in which they had lived following his marriage to and cohabitation with second wife; the courts of such state not being bound by the fraudulently obtained decree in other state.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 212.]

5. Indictment and Information (§ 111 (3)*)—Indictment Need Not Negative Exceptions in Statute Not Constituting Part of the Description of the Offense.—Indictment charging bigamy in violation of Code 1919, § 4538, need not negative exceptions contained in § 4539, since such section does not constitute a part of the description of the defense but merely affords the accused certain grounds of defense.

6. Witnesses (§ 271 (3)*)—Exclusion of Divorce Decree Offered by Defendant during Cross-Examination of State's Witness Held Proper.—In bigamy prosecution in which defendant claimed to have been divorced from first wife, court's refusal to admit copy of divorce decree during defendant's cross-examination of state's witness as to conversation during which defendant had shown witness copy of divorce decree, on defendant's refusal to adopt the witness as his own, held proper the admission of the decree being a matter of defense.

7. Criminal Law (§ 1170 (3)*)—Exclusion of Evidence Subsequently Introduced Harmless.—In bigamy prosecution exclusion of copy of divorce decree offered by defendant during cross-examination of state's witness held harmless, where it was subsequently introduced.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 595.]

8. Criminal Law (§ 759 (1)*)—Refusal to Charge that Failure of Second Wife to Testify Created No Presumption Held Proper in Bigamy Prosecution.—In bigamy prosecution involving validity of defendant's divorce from first wife, refusal to charge that second wife's failure to testify created no presumption against defendant under Code 1919, § 6211, held proper in view of issue as to validity

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of marriage to second wife, since such charge would have been on the facts.

Error to Circuit Court, Wythe County.

L. G. Corvin was convicted of bigamy, and he brings error. Affirmed.

W. S. Poage, S. B. Campbell, and E. Lee Trinkle, all of Wytheville, for appellant.

John R. Saunders, Atty. Gen., J. D. Hank, Jr., Asst. Atty. Gen., and Leon M. Bazile, Second Atty. Gen., for the Commonwealth.

ZIGLER *v.* SPRINKEL, City Treasurer.

Sept. 29, 1921.

[108 S. E. 656.]

1. Mandamus (§ 148*)—Petitioner's Interest in Enforcement of Laws Sufficient.—When the performance of a public duty is sought to be coerced, petitioner's interest, as a citizen, in the enforcement of the laws, is sufficient to entitle him to proceed in mandamus.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 541.]

2. Elections (§ 83*)—Treasurer's List Must Include All Voters Who Paid Poll Taxes Assessed against Them "during" Any or All the Three Years Preceding That of Election.—In view of Const. 1902, § 21, giving one the right to vote if he has paid all poll taxes assessed against him "during the three years next preceding," the city treasurer, under § 38, and Code 1919, § 109, requiring him to file a list of all who have paid the poll taxes required by the Constitution "during the three years next preceding," must place on such list the names of all who have paid the taxes required as a prerequisite to their right to vote at the ensuing election, whether that be the payment of such taxes for one, two, or all three years, § 38 merely furnishing the evidence of the discharge of the requirements imposed by § 21, the word "during" in which means, not "throughout the continuance of," but "in the time of," nor is the right of persons coming into a city from another city within such period to inclusion in the list affected by Code 1919, § 110, entitling them to have their names entered on application to the court, though not entitled to vote on the treasurer's certificate under Code 1919, § 115.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, During.]

Error to Circuit Court, Rockingham County.

Petition by E. A. Zigler for a writ of mandamus against H.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.